

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JEFFREY SEMLER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CIV-11-1354-D
)	
GEICO GENERAL INSURANCE)	
COMPANY,)	
)	
Defendant.)	

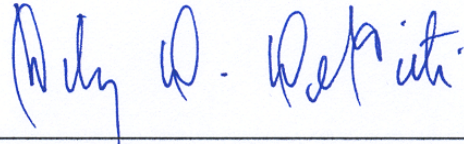
ORDER

The parties' proposed Final Pretrial Report [Doc. No. 127] is not approved. It identifies as a legal issue to be decided at trial a new contention that Defendant GEICO General Insurance Company proposes to raise for the first time following the conclusion of Plaintiff's case-in-chief, presumably by motion under Fed. R. Civ. P. 50. Defendant states it "believes the proper claim to be asserted in this case by Plaintiff is merely a UM claim" rather than a breach of contract claim. *See* Final Pretrial Report [Doc. No. 127] at 4, ¶ 4.D. This contention is not otherwise explained, and is unsupported by citation of legal authority. However, it appears to be a new defense that was not asserted in Defendant's Answer and Counterclaim [Doc. No. 4],¹ nor raised in Defendant's Motion for Summary Judgment [Doc. No. 65]. The Court finds that Defendant's assertion of a new legal defense to Plaintiff's contract claim is untimely, and the issue should not be included in the Final Pretrial Report as a matter to be resolved at trial.

¹ Far from challenging Plaintiff's breach of contract claim as somehow improper, Defendant asserted a counterclaim for a declaratory judgment regarding "the rights and liabilities of the parties under a contract of insurance." *See* Counterclaim [Doc. No. 4] at 14, ¶ 8.

IT IS THEREFORE ORDERED that the parties shall submit a revised Final Pretrial Report not later than January 8, 2014, omitting the legal issue discussed herein.

IT IS SO ORDERED this 6th day of January, 2014.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE